

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4768 OF 2025

Kelvion India Pvt. Ltd.] *Petitioner*

: *Versus* :

Shivaji Tukaram Gawari] *Respondent*

Alongwith

WRIT PETITION NO. 4771 OF 2025

Kelvion India Pvt. Ltd.] *Petitioner*

: *Versus* :

Gulab Suresh Patil] *Respondent*

Alongwith

WRIT PETITION NO. 4785 OF 2025

Kelvion India Pvt. Ltd.] *Petitioner*

: *Versus* :

Krushnadev Bhagwan Inamkar] *Respondent*

Alongwith

WRIT PETITION NO. 4787 OF 2025

Kelvion India Pvt. Ltd.] *Petitioner*

: *Versus* :

Dhanraj Namdev Avassarmol] *Respondent*

Alongwith
WRIT PETITION NO. 4774 OF 2025

Kelvion India Pvt. Ltd.] *Petitioner*

: Versus :

Rahul Vilas Bankar] *Respondent*

Alongwith
WRIT PETITION NO. 4788 OF 2025

Kelvion India Pvt. Ltd.] *Petitioner*

: Versus :

Pramod Pandurang Mankar] *Respondent*

Alongwith
WRIT PETITION NO. 4789 OF 2025

Kelvion India Pvt. Ltd.] *Petitioner*

: Versus :

Vijay Mahadev Suryawanshi] *Respondent*

Alongwith
WRIT PETITION NO. 4779 OF 2025

Kelvion India Pvt. Ltd.] *Petitioner*

: Versus :

Jagatkishor Ramvatar Prasad] *Respondent*

Alongwith
WRIT PETITION NO. 4343 OF 2025

Kelvion India Pvt. Ltd.] *Petitioner*

: Versus :

Sunilkumar Sudan Shahu] *Respondent*

Alongwith
WRIT PETITION NO. 4339 OF 2025

Kelvion India Pvt. Ltd.] *Petitioner*

: Versus :

Pradip Mahavir Shirdhone] *Respondent*

Alongwith
WRIT PETITION NO. 4353 OF 2025

Kelvion India Pvt. Ltd.] *Petitioner*

: Versus :

Rajesh Shrinath Mourya] *Respondent*

Alongwith
WRIT PETITION NO. 4347 OF 2025

Kelvion India Pvt. Ltd.] *Petitioner*

: Versus :

Rajendrakumar Anirudhad Mishra] *Respondent*

Alongwith
WRIT PETITION NO. 4350 OF 2025

Kelvion India Pvt. Ltd.] *Petitioner*

: Versus :

Sakharam Bhanudas Ingale] *Respondent*

Alongwith
WRIT PETITION NO. 4345 OF 2025

Kelvion India Pvt. Ltd.] *Petitioner*

: Versus :

Sagar Vishwambhar Jadhav] *Respondent*

Alongwith
WRIT PETITION NO. 4781 OF 2025

Kelvion India Pvt. Ltd.] *Petitioner*

: Versus :

Deepak Kamalakar Jain] *Respondent*

Alongwith
WRIT PETITION NO. 4340 OF 2025

Kelvion India Pvt. Ltd.] *Petitioner*

: Versus :

Sureshkumar Shamsundar Patel] *Respondent*

Alongwith
WRIT PETITION NO. 4351 OF 2025

Kelvion India Pvt. Ltd.] *Petitioner*

: Versus :

Mahesh Pramod Nikam] *Respondent*

Alongwith
WRIT PETITION NO. 4772 OF 2025

Kelvion India Pvt. Ltd.] *Petitioner*

: Versus :

Kuldip Vasant Kakade] *Respondent*

Alongwith
WRIT PETITION NO. 4776 OF 2025

Kelvion India Pvt. Ltd.] *Petitioner*

: Versus :

Arvind Shivaji Suryawanshi] *Respondent*

Alongwith
WRIT PETITION NO. 4773 OF 2025

Kelvion India Pvt. Ltd.] *Petitioner*

: Versus :

Gulab Ramjatan Chand] *Respondent*

Alongwith
WRIT PETITION NO. 4777 OF 2025

Kelvion India Pvt. Ltd.] *Petitioner*

: Versus :

Ranjit Nityanand Sing] *Respondent*

Alongwith
WRIT PETITION NO. 4769 OF 2025

Kelvion India Pvt. Ltd.] *Petitioner*

: Versus :

Sunil Bundi Yadav] *Respondent*

Alongwith
WRIT PETITION NO. 4780 OF 2025

Kelvion India Pvt. Ltd.] *Petitioner*

: Versus :

Shardul Rashid Shaikh] *Respondent*

Alongwith
WRIT PETITION NO. 4775 OF 2025

Kelvion India Pvt. Ltd.] *Petitioner*

: Versus :

Santosh Baban Shivale] *Respondent*

Alongwith
WRIT PETITION NO. 4790 OF 2025

Kelvion India Pvt. Ltd.] *Petitioner*

: Versus :

Ramdas Bhaguji Utale] *Respondent*

Alongwith
WRIT PETITION NO. 4784 OF 2025

Kelvion India Pvt. Ltd.] *Petitioner*

: Versus :

Satish Damodar Shiwale] *Respondent*

Alongwith
WRIT PETITION NO. 4778 OF 2025

Kelvion India Pvt. Ltd.] *Petitioner*

: Versus :

Bisuddin Abdul Shaikh] *Respondent*

Alongwith
WRIT PETITION NO. 4782 OF 2025

Kelvion India Pvt. Ltd.] *Petitioner*

: Versus :

Shahaalam Manovvar Huseen] *Respondent*

Alongwith
WRIT PETITION NO. 4770 OF 2025

Kelvion India Pvt. Ltd.] *Petitioner*

: Versus :

Pirpasha Gulab Pakali] *Respondent*

Alongwith
WRIT PETITION NO. 4786 OF 2025

Kelvion India Pvt. Ltd.] *Petitioner*

: Versus :

Vardhaman Shridha Shirdhone] *Respondent*

Alongwith
WRIT PETITION NO. 4783 OF 2025

Kelvion India Pvt. Ltd.] *Petitioner*

: Versus :

Rambadan Harishankar Yadav] *Respondent*

FOR THE PETITIONER: **Mr. Kiran Bapat, Senior Advocate** with Mr. Gaurav Gawande i/by. Ms. Mitali Dhoble, for the Petitioner.

FOR THE RESPONDENTS: **Mr. Nitin A. Kulkarni** with Ms. Amruta More and Mr. Dhananjaya Joshi, for the Respondents.

CORAM : SANDEEP V. MARNE, J.

JUDGMENT RESERVED ON : 23 APRIL 2025.

JUDGMENT PRONOUNCED ON : 29 APRIL 2025.

JUDGMENT :

1) These petitions are filed by the Petitioner-employer challenging Part-I Award (*order on preliminary issues*) passed by the Presiding Officer, Labour Court-4, Pune on 17 October 2024 relating to perversity in the findings of the Enquiry Officer. The Labour Court has held that the departmental enquiries conducted against the Respondent-workmen are legal, fair and proper. However, it has held that the findings recorded by the Enquiry Officer are perverse.

2) The Petitioner is engaged in the business of manufacturing compact fin heat exchangers, plate heat exchangers, single tube heat exchangers, transformer cooling system etc and also provides solutions to various industries, including transportation, energy, oil, gas etc. Respondents were working with the Petitioner in various positions as workmen. Respondents were served with the chargesheets on 3 March 2020 in connection with incident that allegedly occurred on 19 February 2020. It was alleged in the chargesheets that on 19 February 2020 at about 7.00 a.m. office bearers of Shivkranti Kamagar Sanghtana called upon the workmen to gather at the gate of the factory. Instead of starting the work and performing normal duties, the workmen gathered in front of the gate of the factory. That the Managing Director of the Company attempted to pacify the union leaders, as well as the entire

mob of the workmen and repeatedly requested them not to resort to any indiscipline and to commence the work. However, the mob of the workmen refused to act on the request of the Managing Director and later became violent. It is alleged that the mob broke glasses, threw stones on the bus and security cabin. The Company was left with no option but to call the police. The crowd went on rampage till arrival of the police at 9.00 a.m. The police disbursed the mob and arrested the union leader and few others. It was alleged that since 20 February 2020, the Respondent-workmen did not report for work. It was alleged in the chargesheet that the acts committed by the Respondent-workmen amounted to illegal strike causing unprecedented damage and loss to the Company. It was alleged in the chargesheet that the Respondent workmen committed serious misconduct under Clauses-24(a), 24(b), 24(k) and 24(l) of the Model Standing Orders.

3) The Respondent-workmen submitted their respective replies to the chargesheets on/or about 16 March 2020. The supplementary chargesheet was issued on 20 January 2021 alleging unauthorised absence from 20 February 2020 and misconduct under Clause-24(f) of the Model standing orders. By the supplementary chargesheet, a practising advocate was also appointed as Enquiry Officer. The Enquiry Officer conducted enquiry and submitted report dated 28 September 2021 holding that misconduct under Clauses-24(a), (k) (l) and (f) was fully proved. The misconduct alleged under Clause-24(b) was held to be disproved. The Petitioner passed orders dated 29 September 2021 dismissing the Respondent-employees from service based on the findings of the Enquiry Officer.

4) At the instance of the Respondents, References were made by the appropriate Government to Labour Court-4, Pune relating to termination of services of the Respondent-workmen under Section 10 of the Industrial Disputes Act, 1947. The Respondent-workmen filed their Statements of Claim, which were resisted by filing Written Statements by the Petitioner-employer. The Labour Court proceeded to frame preliminary issues relating to fairness in the enquiry and perversity in the findings recorded by the Enquiry Officer. By the impugned orders dated 17 October 2024, the Labour Court has held that departmental enquiry conducted against the Respondent-workmen is legal, fair and proper. However, issue no.2 is answered by the Labour Court against the Petitioner-employer by holding that the findings recorded by the Enquiry Officer to the extent of charges under Clauses-(a), (k), (l) and (f) of MSO, 2024 are perverse. Petitioner is aggrieved by orders dated 17 October 2024 passed by the Labour Court on preliminary issue relating to perversity in the findings of the Enquiry Officer and has accordingly filed the present petition.

5) I have heard Mr. Bapat, the learned senior advocate appearing for the Petitioner. He would submit that the Labour Court has erred in holding that the findings of the Enquiry Officer are perverse. That there is sufficient evidence on record to prove all the four allegations under Clauses-(a), (k), (l) and (f) of the MSO, 2024. He would submit that the enquiry has been held to be legal, fair and proper and therefore the entire evidence recorded during the course of enquiry will have to be considered and consideration of which would clearly indicate existence of sufficient material to bring home the charges levelled against the Respondents. He would submit that the Labour Court has completely misdirected itself in recording the finding that the Respondent-

workmen were not involved in the act of pelting of stones and indulging in violence. He would submit that the Respondent-workmen were never charged with the misconduct of pelting stones or being violent. That the charges were restricted to gathering in front of the gate of the factory by leaving work, insubordination, indiscipline and disorderly behaviour. That these elements of charges are clearly proved in the present case as Respondent-employees themselves admitted that they had gathered at the gate and had left the work. So far as the allegation of disorderly behaviour, insubordination and indiscipline is concerned, the same is clearly proved in the light of deposition of witness, Balu Zodge, who has personally witnessed the incident. However, the Labour Court erroneously assumed that the allegation of pelting stones and being violent was also levelled against the Respondent-workmen and held the findings of the Enquiry Officer to be proved on such erroneous presumption.

6) So far as the allegation of remaining unauthorisedly absent since 19.2.2020, Mr. Bapat would contend that absence from duties from 19.2.2020 is not seriously disputed. That the Management examined the witness, Shri. Swapnil Mahamuni, Ex.HR who led evidence about Respondent-workmen not reporting for duties after 20.2.2020. That they were absent for long period from 20.2.2020 till 20.1.2021. That the said witness was competent to give evidence relating to absence of the Respondent-workmen by producing the records maintained by the company. That therefore witness joining employment with the Petitioner in March 2020 would not render him incapable of leading evidence about absence of Respondent-workmen from service. He would submit that witness-Swapnil Mahamuni was examined essentially to prove unauthorised absence of the respondent-workmen.

The incident which occurred on 19.2.2020 was witnessed by Balu Zodge and he has led evidence about the same. Mr. Bapat would accordingly submit that there is sufficient evidence on record to prove the charges.

7) Mr. Bapat would further submit that since the Respondent-workmen had engaged themselves in disorderly behaviour and serious incident had occurred on 19 February 2020, the Management was in its right to ask for undertaking/bond of good behaviour. He would submit that several similarly placed employees gave such undertakings/bonds and were immediately permitted to resume duties. That Respondent-workmen are responsible for their absence from duties as they refused to submit undertaking/bond as they were never interested to work with the Petitioner. In support of his contention that the Petitioner-employer was entitled to insist on bond of good behaviour, Mr. Bapat would rely upon judgment of this Court in Maharashtra Labour Union Versus. Pride Hotel Pvt. Ltd. & Anr.¹ Mr. Bapat would further submit that it was incumbent on the Respondent-workmen to raise a specific prayer in the Statement of claim for a declaration that the findings of the Enquiry Officer are perverse and that in absence of such a declaration, it was beyond the jurisdiction of the Labour Court to issue the same. In support he would rely upon judgment of this Court in Maharashtra State Co-operative Cotton Growers Marketing Federation Ltd. & Anr. Versus. Vasant Ambadas Deshpande². Mr. Bapat would accordingly pray for setting aside the impugned orders dated 17 October 2024 to the extent of findings of perversity.

1 2001 SCC ONLINE BOM 1266

2 2014 SCC ONLINE BOM 16

8) The petitions are opposed by Mr. Kulkarni, the learned counsel appearing for the Respondent-workmen. He would submit that the Labour Court has rightly held the findings of the Enquiry Officer to be perverse. He would submit that none of the Respondent-workmen have committed any misconduct who were unnecessarily embroiled in disciplinary proceedings and later thrown out from service. That there is no allegation in the chargesheet that any of the Respondent-workmen indulged in any violent act. The Respondent-workmen had merely gathered at the gate and did not associate themselves with any of the violent activities. However, the Petitioner-Management forced all the workmen to sign undertakings by admitting acts which were not committed by them. That the Respondent-workmen rightly refused to sign such undertakings which would have amounted to admission of something which was never done by them. He would take me through the undertakings submitted by the other workers in support of his contention that the undertakings were prepared by the Management and contained admissions of acts not performed by the workmen. He would submit that about 120 workmen were restrained from joining duties. Nine out of them submitted undertakings and 57 workmen later settled with the Management and were allowed to resume work. The dispute was raised in respect of 36 workmen. In respect of four workmen, the entire enquiry is held to be vitiated and the said findings are not questioned by the Petitioners. In respect of one workmen, the Labour Court held that the enquiry was fair and proper and the findings were not perverse. It is only in case of 31 present respondents that the findings of the Enquiry officer are held to be perverse though enquiry against them is held to be fair and proper.

9) He would submit that the Labour Court has rightly appreciated the entire evidence on record. That witness-Mahamuni was not even in employment was examined to lead evidence about the incident of 19.2.2020. That the other witness-Balu Zodge was one of the similarly placed workmen and his evidence does not bear out any act of misconduct on the part of the Respondent-Workmen. That the chargesheet did suggest involvement/role of the respondent-workmen in the violent act of stone pelting but no evidence could be led by the Petitioner in support of the said evidence. So far as the submission of undertakings as a precondition for resumption of duties is concerned, Mr. Kulkarni would rely upon judgment of this Court in *Stardent Laboratory (Private) Ltd. Versus. Shramik Sahakar Sangh and Ors.*³ He would submit that findings of facts recorded by the Labour Court on appreciation of evidence do not warrant any interference by this Court under Article 227 of the Constitution of India. He would pray for dismissal of the petitions.

10) Rival contentions of the parties now fall for my consideration.

11) The Labour Court has held the enquiry to be fair and proper and the said findings are not questioned by the Respondent-workmen. It is only Issue no.2 relating to perversity, which has been answered against the Petitioner and in favour of the Respondent-workmen. Therefore, the limited issue involved in the present petitions is whether the findings recorded by the Labour Court on preliminary Issue No.2 relating to perversity are sustainable or not?

³ 2004 (2) L.L.N. 955

12) Petitioner issued two chargesheets to the Respondent-workmen. The first chargesheet dated 3.3.2020 issued to one of the Respondent-Shivaji Tukaram Gawari is as under:

CHARGE SHEET

You are working in the company as Press Operator. On 19/2/2020 at about 7:00 a.m. the office bearers of Shiv Kranti Kamgar Sanghatana asked you to come to the gate of the factory. Instead of starting work and performing your normal duties you gathered in front of the gate of the factory. Mr.Virendra Jhamb, Managing Director of the company tried to talk to the leaders and the entire mob of the workmen. He repeatedly requested them not to resort indiscipline and start the work. "The entire mob was unwilling to listen. The mob became violent. They broke the glasses, threw stones on the bus and security cabin i.e. resorted to violence.

In view of the same the company was left with no other option but to call the police who came to the gate of the factory at around 9:00 am.. Till that time the crowd was on rampage and we heard Sandeep, the declared leader was talking to one Mr. Vijay Palekar who was issuing instructions. Our MD requested the phone from Sandeep and talked to Mr. Vijay Palekar and asked him to stop instigating and request all workers to come inside and talk all peacefully the reason of this stoppage, we fail to understand the reason. As the time and again untenable pressure tactics are spoiling the discipline and work ethics in the workers and we are loosing the productivity and bringing liability, this will not help us to help the worker's interests. The police then disposed the mob and arrested Union Leader and others. Since that day i.e. 19/2/2020 you have not reported for work

The aforementioned act on your part amount to an illegal strike. It is causing unprecedented damage and loss to the company.

All these/acts on your part amounts to serious misconducts under Clause 24 (a), 24 (b) 24 (k) & 24 (l) of the Model Standing Orders applicable to your category which are as under:

24(a) :Willful insubordination or disobedience, whether or not in combination with another, or any lawful and reasonable order of a superior,

24 (b) : Going on an illegal strike or abetting, inciting, instigating or acting in furtherance thereof,

24(k): Drunkenness, riotous, disorderly or indecent behavior on the premises of the establishment.

24 (l): Commission of any act subversive of discipline or good behavior on the premises of the establishment.

You are hereby charged of the aforementioned misconducts and are directed to submit your written explanation to the aforementioned charges and show cause as to why disciplinary action should not be taken against you. In the event you do not reply within one week from the receipt of this charge sheet, it shall be presumed that you have no explanation to offer and the management shall then be free to take such action as deemed fit.

For Kelvion India Pvt. Ltd.

13) The second chargesheet was issued on 20 January 2021 which was a composite document of alleging additional charge, as well as appointing enquiry officer. The relevant part of the chargesheet dated 20.1.2021 reads thus :

दिनांक १९/०२/२०२० रोजी घडलेल्या घटनेचे गांभीर्य विचारात घेता व्यवस्थापनाने कंपनीच्या एकूण सुरक्षितेतच्या दृष्टीने तसेच कंपनीच्या मालमत्तेचे नुकसान होवू नये म्हणून तुम्हास व सदर घटनेत सहभागी असलेल्या इतर कामगारांना रास्त व योग्य असे चांगल्या वागणुकीचे हमी पत्र देवून कामावर रुजू होण्यास सुचीत केले होते. त्या नुसार तुमचे काही सहकामगार हमी पत्र देवून कामावर रुजू झाले. तथापि, तुम्ही दिनांक २०/०२/२०२० पासून आजतागायत कोणतीही रजा मंजूर करून न घेता अनधिकृतरित्या कामावर गैरहजर राहीला आहात. कोव्हीड १९ च्या कारणे कंपनीचे कामकाज हे लॉक डावून कालावधीत सुध्दा नियमित सुरू होते व सदर कालावधीत तुमची कामावरील हजेरी ही अत्यंत आवश्यक होती परंतु सदर काळातही वर नमुद केल्या प्रमाणे तुम्ही अनधिकृतरित्या गैरहजर राहीलात.

14) This is how Respondents were accused of committing misconducts under Clauses -24(a), 24(b), 24(k), 24(l) and 24(f) of the MSO. The Enquiry Officer held that the misconduct under MSO-24(b) (*proceeding on illegal strike*) was not proved in the enquiry. Thus, the allegation of proceeding on strike under MSO-24(b) is held to be disproved in the enquiry itself. Therefore, the Labour Court was required to examine the correctness of the findings recorded by the

Enquiry Officer only in respect of Clauses-24(a), 24(k), 24(l) and 24(f) of the MSO.

15) Mr. Bapat has fairly submitted that the Petitioner never accused the Respondent-workmen of pelting stones or engaging in acts of violence. He would submit that so far as the incident of 19 February 2020 is concerned, the same is restricted to the acts of gathering at the gate by leaving the work and acts of insubordination, indiscipline and disorderly behaviour. On account of fair submission made by Mr. Bapat, the task is now easier as this Court needs to consider whether there is sufficient evidence on record in support of the allegations of (i)gathering at the gate by leaving work and (ii)insubordination, indiscipline and disorderly behaviour. Both these elements of charges are pertaining to the incident that occurred on 19 February 2020.

16) So far as the first element of gathering at the gate by leaving the wok is concerned, the allegation appears to have been admitted by the Respondent-workmen. In this regard, it would be apposite to reproduce the relevant portion of the reply submitted by Respondent-Shivaji Tukaram Gavari on 16 March 2020:

सदरची बाब कामगारांना व मला कंपनीत कळल्यानंतर सर्व उपस्थित असेलेल्या कामगारांनी पदाधिका-यांना कंपनीच्या आत का घेत नाहीत म्हणून कामगार स्वयंस्फुर्तीने कंपनीच्या बाहेर आलो. त्याचवेळेला कंपनीचे मॅनेजिंग डायरेक्टर श्रीयुत विरेंद्र जाम हे कंपनीच्या गेटवरती आले तेव्हा त्यांच्या कानावरती युनियनच्या पदाधिका-यांना न घेतल्याबाबत काय कारण आहे तसेच ५० कामगारांना का पगार दिला नाही, याचेवरून विचारणा करीत असताना काही गुंड प्रवृत्तीच्या माणसांनी कंपनीच्या गेटवरती दगडफेक केली त्याचा व युनियनच्या पदाधिका-यांचा तसेच आमचा /माझा काहीही संबंध नाही. केवळ युनियनच्या पदाधिका-यांना कामावरती प्रतिबंध केल्यामुळे आतमध्ये गेलेल्या कामगारांनी स्वयंस्फुर्तीने काम सोडल्यामुळे आपण चिडून जावून खोटे आरोपपत्र दिले आहे. त्यातील मजकूर हा धादांत खोटा व आहे. बनावट आहे

17) Thus, the Respondent-workmen admit that they came out of the factory and gathered at the gate on their own volition. It has also been admitted that the office bearers of the union were terminated from performing duties and therefore other workmen had left the work on their own volition. Thus, the elements of gathering at the gate and leaving the work are expressly admitted in the reply to the chargesheet. These, allegations are also proved by the deposition of Management Witness No.2-Balu Zodge. In my view, therefore the first element of charge relating to gathering at the gate by leaving work is clearly established and to this extent, finding of the Labour Court is clearly perverse. The Labour Court apparently did not appreciate this position, possibly on account of non-clarification by the Petitioner that the allegation of pelting stones and indulging in violent conduct was never pressed against the Respondent-workmen. On account of failure on Petitioner's part to give such clarification, the Labour Court unnecessarily took the exercise of examining whether there was evidence of pelting stones and indulging in violent acts against the Respondent-workmen. As observed above, the allegation was restricted to gathering at the gate by leaving work, which is clearly established on account of admission given by the Respondent-workmen.

18) So far as the second element of the charge relating to the incident of 19 February 2020 is concerned, the same relates to insubordination, indiscipline and disorderly behaviour. Here again, disorderly behaviour is not to be confused with riotous behaviour. Mr. Bapat has clarified that insubordination, indiscipline and disorderly behaviour is attributable to the conduct of the Respondent-workmen in not reporting back to work despite being requested by Managing

Director. The evidence of Management Witness-Balu Shantaram Zodge would indicate that the Managing Director did attempt to pacify the workers and repeatedly requested them to join the work. Therefore, there appears to be some evidence in support of this element of charge. In fact, the statements made in the reply about non-resumption of work by gathering at the gate also contains an implicit admission in respect of the element of not responding to the repeated requests of the Managing Director. In my view, therefore there is some evidence in support of the second element of charge relating to disorderly behaviour, indiscipline and insubordination. However, it is clarified that disorderly behaviour is not to be confused with any violence or riotous act. The misconduct of disorderly behaviour is restricted only to the element of not listening to the repeated requests of the Managing Director.

19) The Labour Court has failed to take into consideration that there was sufficient evidence on record with regard to the elements of charges relating to (i) gathering at the gate by leaving the work and (ii)insubordination/indiscipline and disorderly behaviour.

20) Coming to the additional charge of unauthorised absence from 20 February 2020 onwards, it appears that the Petitioner put a condition of signing and submitting undertaking/bond of good behaviour for letting the Respondent-workmen resume the work. This fact is borne out by the reply filed to the chargesheet. In his reply, Respondent-Shivaji Tukaram Gavari specifically contended that after the police left, the Petitioner did not permit the Respondents to resume duties. It is further contended in the reply that after 20 February 2020, Petitioner put a condition of submitting undertaking as a precondition for joining services. As observed above, nine workers had submitted

undertakings and were allowed to resume duties. I have gone through the two undertakings submitted by the Workmen-Balu Shantaram Zodge, who also happened to be the Management witness. The undertaking contains an admission that he proceeded on illegal strike on 20 February 2020. He expressed an apology for his misconduct. He further undertook to obey order of superior officers, maintaining discipline and deliver requisite production. There is a further admission that he committed illegal acts on the advice of Shri. Vijay Pandurang Palekar. The first undertaking given by Balu Shantaram Zodge is as under:

हमीपत्र

मैं... ..टिकट न (पचिंग न.)शपथपूर्वक सत्यकथन करता हूँ के

मैं केल्विन इंडीया प्रा.लि. कंपनीका आदर रखता हूँ और मुझे भलीभांती पता है के कंपनीमे सभी कर्मचारियोंका अच्छे से खयाल रखा जाता है।

लेकीन फीर भी मैंने एक सामान्य कारण और आम समझ के तहत काम के लिए रिपोर्टिंग नही करके एक अवैध और साथ ही अनुचित हडताल का दि.१९.०२.२०२० को सहारा लिया था।

मैंने घोषणां कि है कि मैं अपनी गलती के समर्थन, सलाह और दायित्व पर अपनी गलती का एहसास कर चुका हूँ। मैं अपने कृत्यों के लिए माफी मांगता हूँ और प्रार्थना करता हूँ कि कंपनी मुझे क्षमा करें और मुझे कारखाने के परिसर करने के बाद, मैं वरिष्ठों के वैध और उचित आदेशों का पालन और नियमन करूंगा। मैं अनुशासन बनाए रखूंगा और उत्पादन और उत्पादकता दूंगा। मैं अनुशासन के किसी भी कृत्य में लिप्त नहीं रहूंगा या कोई कदाचार नहीं करूंगा।

मैं यह कबुल करता हूँ के, मुझ से गलती हो गई की, मैंने श्री. विजय पांडुरंग पाळेकर के सलाह से अनुचित काम कीया।

इसके आगे कंपनी में सभी सेफ्टी उपकरणों का इस्तेमाल करूंगा। कंपनी मे प्रवेश करते समय मोबाईल साथ मे नही रखूंगा। एच.आर. और एम.डी. साहब के निर्देशों का शालीनता पूर्वक पालन करूंगा।

मैं किसी भी राजनैतीक पार्टी या व्यक्ति के साथ मिलकर कंपनीके खिलाफ किसी भी आंदोलन, बातचीत मे शामिल नही रहूंगा, और नाही किसी दुसरे व्यक्ति को कंपनीके खिलाफ कार्य के लिए उत्तेजित करूंगा। अगर मैं इस उहापोह का उल्लंघन करता हूँ तो मैं कंपनी को मेरे खिलाफ सख्त से सख्त कारवाई करने का अधिकार देता हूँ।

21) It appears that one more undertaking was obtained from Balu Shantaram Zodge which reads thus:

हमीपत्र

दिनांक १९.०२.२०२० से दिनांक २५.०२.२०२० के दौरान हमने कर्तव्यों के बारे में केल्वीन इंडीया प्रा.लि. कंपनी को रिपोर्ट नहीं कि है। इसलिए हम आपसे अनुरोध करते हैं कि आप हमें कर्तव्यों के लिए रिपोर्ट करने की अनुमति दें। हम ए एतद्वारा आश्वासन देते हैं और कहते हैं कि कारखाने के परिसर में प्रवेश करने पर, हम सामान्य कर्तव्यों का पालन करेंगे और स्थापना के नियमों का पूरी तरह पालन और नियमन करेंगे। हम आवश्यक उत्पादन और उत्पादकता देंगे।

22) Perusal of the above undertakings would indicate a clear admission on the part of the workman that he participated in illegal strike. As observed above, the misconduct of proceeding on illegal strike under Clause-24(f) was not proved in the enquiry itself. Thus, the charge which was subsequently found to be disproved was sought to be admitted through undertaking prepared by the Petitioner. Without signing and submitting the said undertaking, the petitioner refused to let the Respondent-workmen resume duties.

23) In my view, there are atleast two reasons why the action on the part of Petitioner prescribing condition of submission of undertaking/bond is absolutely illegal in the facts and circumstances of the present case. Firstly, the undertaking required admission of charge which was subsequently held to be disproved by Petitioner's own Enquiry Officer. Secondly, the undertaking was mainly with reference to the incident of 19 February 2020 in which the only allegation, as now clarified by Mr. Bapat, was relating to gathering at the gate by leaving work and insubordination/indiscipline/disorderly behaviour. The chargesheet is so vaguely worded that the Labour Court itself got

confused as to whether the Petitioner proposed proof of charge of pelting stones and violent behaviour against the Respondent-workmen. Therefore, it appears that on 19/20 February 2020, when insistence was made for submission of undertakings/bonds, the employer carried an impression as if the Respondent-workmen were a part of mob which pelted stones and indulged in violent behaviour. However, it has now transpired that the Petitioner-employer accused the Respondent-workmen only of misconduct of gathering at the gate by leaving work and disorderly behaviour/indiscipline/insubordination. Submission of undertaking/bond of good behaviour for this kind of misconduct as a precondition for resumption of duties was clearly unwarranted. In my view therefore, Petitioner-employer was not justified in not allowing Respondent-workmen to resume duties either on 19 April 2020 or from 20 April 2020 onwards on the ground of non-submission of undertaking/bond of good behaviour.

24) Reliance by Mr. Kulkani on judgment of this Court in *Stardent Laboratoty Pvt. Ltd.* (supra) is apposite. This Court held as under:

3. Apart from the fact that the finding arrived at by the Industrial Court about refusal to allow the employees to resume to their duties being based on assessment of the materials on record and being essentially a finding of fact the same cannot be subjected to judicial review in the writ petition, bare reading of the format of the undertaking would justify rejection of the petition in limine. **It is well settled that though the employer may be justified in asking for undertaking in case of the workmen having been found to have indulged in violent activities, to ensure the smooth functioning of the industry, the employer cannot insist upon obtaining confession from the employees about the illegality of the strike or the unruly acts on their part nor about waiver of their right to claim wages without even holding any inquiry in that regard in accordance with the provisions of law.**

(emphasis added)

In the present case as well, the Petitioner has sought to extract admission of something which is not done by the Respondent-workmen

through the undertaking. Therefore insistence on the part of the Petitioner in submitting undertakings in format as a precondition for resuming work and thereafter accusing the workmen of unauthorised absence is clearly erroneous.

25) Reliance by Mr. Bapat on the judgment of this Court in *Maharashtra Labour Union* is inapposite. In that case, the concerned workmen were working in a five-star hotel and indulged in improper activities like wearing red bands over the uniform provided by the hotel while on duty, shouting slogans, making false complaints to police, abusing staff members on duty and not responding to the call to resume work. They also restrained other workers, who were intending to resume duty. This behaviour put the Hotel to huge financial losses and tarnishing its image. This Court therefore upheld the action of the hotel in demanding undertakings and bonds of good behaviour for the purpose of maintaining discipline for internal business. In the present case, the undertaking was not restricted to good behaviour but contained admission of something which is ultimately held to be disproved in the enquiry. Also, the nature of misconduct that is proved against the Respondent-workmen was not worthy of demanding such undertaking as pre-condition for resumption of duties. Therefore, reliance by Mr. Bapat on judgment of this Court in *Maharashtra Labour Union* would not assist his case.

26) I am therefore of the view that the Labour Court has rightly held that the additional charge vide Clause-24(f) of MSO relating to unauthorised absence has not been proved in the enquiry. The absence of the Respondent-workmen is clearly attributable to the illegal act of the Petitioner in demanding submission of undertakings/bonds as a

precondition for joining duties. The conclusion of the Labour Court about perversity in enquiry officer's finding relating to charge of unauthorised absence therefore deserves to be upheld.

27) Mr. Bapat has contended that in absence of prayer in the Statement of Claim for declaration that the enquiry is vitiated, such a declaration cannot be issued by an industrial adjudicator. Reliance is placed on judgment of this Court in *Maharashtra State Co-op. Cotton Growers Marketing Federation Ltd.* (supra). In the present case, the Appropriate Government made references relating to termination of services of the Respondent-workmen and their entitlement for reinstatement with continuity of service and backwages. The Respondent-workmen filed their Statements of Claim challenging the order of dismissal and seeking reinstatement with backwages and consequential benefits. In my view, these prayers are sufficient for deciding the validity of order of dismissal. While adjudicating a prayer challenging the order of dismissal, the Court is bound to examine to whether the enquiry is conducted by following the principles of natural justice and whether the findings of the Enquiry Officer are perverse or not. In the event either of the issue being answered against the employer, the enquiry automatically becomes vitiated and such a declaration can be made while answering the preliminary issues. Therefore, mere absence of prayer in the Statement of Claim seeking declaration of vitiation of inquiry cannot be a ground for holding that the Labour Court could not have gone into the issue of perversity in the findings of the enquiry officer.

28) Considering the overall conspectus of the case, I am of the view that the Petitioner-employer has been able to prove only the twin

elements of charges namely, (i) gathering at the gate by leaving work, and (ii) insubordination/indiscipline and disorderly behaviour (*as clarified above*). The charge of unauthorised absence under Clause-24(f) of the Model Standing Orders is not proved. Therefore, the order passed by the Labour Court deserves to be interfered with only partly while upholding the same with regard to the charge of unauthorised absence.

29) The petitions succeed partly and I proceed to pass the following order:

- (i) The judgment and order dated 17 October 2024 passed by the Labour Court is modified *qua* the issue of perversity in the findings of the Enquiry Officer.
- (ii) It is held that the findings of the Enquiry Officer on element of charges of (i) gathering at the gate by leaving work and (ii) insubordination, indiscipline and disorderly behaviour are held to be not perverse.
- (iii) The findings of the Enquiry Officer on charge relating to unauthorised absence under Clause-24(f) is held to be perverse.

30) All the petitions are **partly allowed** to the above extent. There shall be no order as to costs.

NEETA
SHAILESH
SAWANT

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[SANDEEP V. MARNE, J.]